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No. 82-690

In the Supreme Court of the United States

OCTOBER TERM, 1982

GENERAL MOTORS CORPORATION,
Petitioner,

vs.

INTERNATIONAL TRADE COMMISSION
AND KUHLMAN CORPORATION,
Respondents.

PETITIONER GM'S BRIEF IN RESPONSE TO RESPONDENT KUHLMAN'S BRIEF IN OPPOSITION

GEORGE E. FROST
3044 W. Grand Blvd.
Detroit, MI 48202
(313) 556-3586

Counsel for Petitioner

Of Counsel
FREDERICK M. RITCHIE
3044 W. Grand Blvd.
Detroit, MI 48202
(313) 556-3744

RENAISSANCE PRINTING COMPANY, 76 W. ADAMS
8TH FLOOR, DETROIT, MICHIGAN 48226 — (313) 964-3185

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The Kuhlman brief in opposition does not articulate what the supposed invention physically is, or what the purported inventors actually did or claimed to have done. Instead, it culls bits and pieces of "secondary evidence" from the record and relies upon them to show unobviousness. Totally ignored are the following indisputable facts:

1. The Patent Examiner was induced to allow the claims only after amendment reciting "said one

[1] Exhibit 1, this brief, is a statement under Rule 28.1 replacing the GM Rule 28.1 Listing of our Petition.

turn being unground". Petition, p. 10. The Administrative Law Judge found, and the ITC confirmed, that the Schaad prior art spring turn was in fact unground and that "this would not have been a valid distinction". Appendix, 74a, 69a, 37a.

2. The ALJ, after trial, found that the only claimed matter not in the "prior art" was the format of the structure, and that this was derived by the alleged inventors from GM's disclosure to them. Appendix, 76a, 77a, Petition, p. 6. The Patent Examiner was not informed of the disclosure and could not have taken it into account. Appendix, 11a. The presumption of patent validity is irrational in relation to it.

3. The Schaad prior art patent shows attachment of springs to a sheet metal seat by the same staking process as the patent in suit so as to grip each spring in the same manner. There is not, and cannot be, any contention that the attachment differs significantly from Schaad, and the identity is evident from the respective drawings. Petition, p. 8.

The rulings of this Court focus on what the alleged inventor has physically done and has claimed to have done. Here, the only thing done was to take the disclosure previously made to the inventors by GM and substitute the spring attachment shown in the Schaad prior art patent. Nevertheless, and in contradiction to this Court, the court below has inflated the presumption of patent validity and "secondary tests" to validate the patent.

The petition should be granted.

Respectfully submitted,

George E. Frost
3044 W. Grand Blvd.
Detroit, MI 48202
(313) 556-3586

Counsel for Petitioner

Of Counsel
Frederick M. Ritchie
3044 W. Grand Blvd.
Detroit, MI 48202
(313) 556-3744

EXHIBIT I

The following information is provided by General Motors Corporation pursuant to Supreme Court Rule 28.1: All U.S. and Canadian subsidiaries of General Motors Corporation are wholly owned with the exceptions of Motor Enterprises, Inc., which is partly owned by the U.S. Small Business Administration, and GM Fanuc Robotics Corporation, which is partly owned by Fanuc Limited.

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